

3745-109-11

CAIR SO2 allowance tracking system.

[Comment: For dates of non-regulatory government publications, publications of recognized organizations and associations, federal rules, and federal statutory provisions referenced in this rule, see ~~the last~~ paragraph (H) of rule 3745-109-01 of the Administrative Code titled "Incorporation by Reference."]

(A) Establishment of accounts.

- (1) Compliance accounts. Except as provided in paragraph (E)(5) of rule 3745-109-14 of the Administrative Code, upon receipt of a complete certificate of representation under paragraph (D) of rule 3745-109-09 of the Administrative Code, the administrator shall establish a compliance account for the CAIR SO2 source for which the certificate of representation was submitted, unless the source already has a compliance account.

(2) General accounts.**(a) Application for general account.**

- (i) Any person may apply to open a general account for the purpose of holding and transferring CAIR SO2 allowances. An application for a general account may designate one and only one CAIR authorized account representative and one and only one alternate CAIR authorized account representative who may act on behalf of the CAIR authorized account representative. The agreement by which the alternate CAIR authorized account representative is selected shall include a procedure for authorizing the alternate CAIR authorized account representative to act in lieu of the CAIR authorized account representative.

- (ii) A complete application for a general account shall be submitted to the administrator and shall include the following elements in a format prescribed by the administrator:

- (a) Name, mailing address, e-mail address (if any), telephone number, and facsimile transmission number (if any) of the CAIR authorized account representative and any alternate CAIR authorized account representative;

- (b) Organization name and type of organization, if applicable;

- (c) A list of all persons subject to a binding agreement for the CAIR authorized account representative and any alternate

CAIR authorized account representative to represent their ownership interest with respect to the CAIR SO₂ allowances held in the general account;

- (d) The following certification statement by the CAIR authorized account representative and any alternate CAIR authorized account representative: "I certify that I was selected as the CAIR authorized account representative or the alternate CAIR authorized account representative, as applicable, by an agreement that is binding on all persons who have an ownership interest with respect to CAIR SO₂ allowances held in the general account. I certify that I have all the necessary authority to carry out my duties and responsibilities under the CAIR SO₂ trading program on behalf of such persons and that each such person shall be fully bound by my representations, actions, inactions, or submissions and by any order or decision issued to me by the administrator or a court regarding the general account."
- (e) The signature of the CAIR authorized account representative and any alternate CAIR authorized account representative and the dates signed.
- (iii) Unless otherwise required by the director or the administrator, documents of agreement referred to in the application for a general account shall not be submitted to the director or the administrator. Neither the director nor the administrator shall be under any obligation to review or evaluate the sufficiency of such documents, if submitted.
- (iv) Authorization of CAIR authorized account representative and alternate CAIR authorized account representative.
 - (a) Upon receipt by the administrator of a complete application for a general account under paragraph (A)(2)(a) of this rule:
 - (i) The administrator shall establish a general account for the person or persons for whom the application is submitted.
 - (ii) The CAIR authorized account representative and any alternate CAIR authorized account representative for the general account shall represent and, by his or her

representations, actions, inactions, or submissions, legally bind each person who has an ownership interest with respect to CAIR SO₂ allowances held in the general account in all matters pertaining to the CAIR SO₂ trading program, notwithstanding any agreement between the CAIR authorized account representative or any alternate CAIR authorized account representative and such person. Any such person shall be bound by any order or decision issued to the CAIR authorized account representative or any alternate CAIR authorized account representative by the administrator or a court regarding the general account.

- (iii) Any representation, action, inaction, or submission by any alternate CAIR authorized account representative shall be deemed to be a representation, action, inaction, or submission by the CAIR authorized account representative.
 - (b) Each submission concerning the general account shall be submitted, signed, and certified by the CAIR authorized account representative or any alternate CAIR authorized account representative for the persons having an ownership interest with respect to CAIR SO₂ allowances held in the general account. Each such submission shall include the following certification statement by the CAIR authorized account representative or any alternate CAIR authorized account representative: "I am authorized to make this submission on behalf of the persons having an ownership interest with respect to the CAIR SO₂ allowances held in the general account. I certify under penalty of law that I have personally examined, and am familiar with, the statements and information submitted in this document and all its attachments. Based on my inquiry of those individuals with primary responsibility for obtaining the information, I certify that the statements and information are to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false statements and information or omitting required statements and information, including the possibility of fine or imprisonment."
 - (c) The administrator shall accept or act on a submission

concerning the general account only if the submission has been made, signed, and certified in accordance with paragraph (A)(2)(b)(ii) of this rule.

(v) Changing CAIR authorized account representative, alternate CAIR authorized account representative and changes in persons with ownership interest.

(a) The CAIR authorized account representative for a general account may be changed at any time upon receipt by the administrator of a superseding complete application for a general account under paragraph (A)(2)(a) of this rule. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous CAIR authorized account representative before the time and date when the administrator receives the superseding application for a general account shall be binding on the new CAIR authorized account representative and the persons with an ownership interest with respect to the CAIR SO2 allowances in the general account.

(b) The alternate CAIR authorized account representative for a general account may be changed at any time upon receipt by the administrator of a superseding complete application for a general account under paragraph (A)(2)(a) of this rule. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous alternate CAIR authorized account representative before the time and date when the administrator receives the superseding application for a general account shall be binding on the new alternate CAIR authorized account representative and the persons with an ownership interest with respect to the CAIR SO2 allowances in the general account.

(c) For changes in ownership interests:

(i) In the event a person having an ownership interest with respect to CAIR SO2 allowances in the general account is not included in the list of such persons in the application for a general account, such person shall be deemed to be subject to and bound by the application for a general account, the representation, actions, inactions, and submissions of the CAIR authorized account representative and any alternate

CAIR authorized account representative of the account, and the decisions and orders of the administrator or a court, as if the person were included in such list.

- (ii) Within thirty days following any change in the persons having an ownership interest with respect to CAIR SO₂ allowances in the general account, including the addition of a new person, the CAIR authorized account representative or any alternate CAIR authorized account representative shall submit a revision to the application for a general account amending the list of persons having an ownership interest with respect to the CAIR SO₂ allowances in the general account to include the change.
- (vi) Objections concerning CAIR authorized account representative and alternate CAIR authorized account representative.
 - (a) Once a complete application for a general account under paragraph (A)(2)(a) of this rule has been submitted and received, the administrator shall rely on the application unless and until a superseding complete application for a general account under paragraph (A)(2)(a) of this rule is received by the administrator.
 - (b) Except as provided in paragraph (A)(2)(c)(i) or (A)(2)(c)(ii) of this rule, no objection or other communication submitted to the administrator concerning the authorization, or any representation, action, inaction, or submission of the CAIR authorized account representative or any alternate CAIR authorized account representative for a general account shall affect any representation, action, inaction, or submission of the CAIR authorized account representative or any alternate CAIR authorized account representative or the finality of any decision or order by the administrator under the CAIR SO₂ trading program.
 - (c) The administrator shall not adjudicate any private legal dispute concerning the authorization or any representation, action, inaction, or submission of the CAIR authorized account representative or any alternate CAIR authorized account representative for a general account, including private legal disputes concerning the proceeds of CAIR

SO2 allowance transfers.

(vii) Delegation by CAIR authorized account representative and alternate CAIR authorized account representative.

(a) A CAIR authorized account representative may delegate, to one or more natural persons, his or her authority to make an electronic submission to the administrator provided for or required under rules 3745-109-11 and 3745-109-12 of the Administrative Code.

(b) An alternate CAIR authorized account representative may delegate, to one or more natural persons, his or her authority to make an electronic submission to the administrator provided for or required under rules 3745-109-11 and 3745-109-12 of the Administrative Code

(c) In order to delegate authority to make an electronic submission to the administrator in accordance with paragraph (A)(2)(a)(vii)(a) or (A)(2)(a)(vii)(b) of this rule, the CAIR authorized account representative or alternate CAIR authorized account representative, as appropriate, must submit to the administrator a notice of delegation, in a format prescribed by the administrator, that includes the following elements:

(i) The name, address, e-mail address, telephone number, and facsimile transmission number (if any) of such CAIR authorized account representative or alternate CAIR authorized account representative;

(ii) The name, address, e-mail address, telephone number, and, facsimile transmission number (if any) of each such natural person (referred to as an "agent");

(iii) For each such natural person, a list of the type or types of electronic submissions under paragraph (A)(2)(a)(vii)(a) or (A)(2)(a)(vii)(b) of this rule for which authority is delegated to him or her;

(iv) The following certification statement by such CAIR authorized account representative or alternate CAIR

authorized account representative: "I agree that any electronic submission to the administrator that is by an agent identified in this notice of delegation and of a type listed for such agent in this notice of delegation and that is made when I am a CAIR authorized account representative or alternate CAIR authorized representative, as appropriate, and before this notice of delegation is superseded by another notice of delegation under paragraph (A)(2)(vii)(d) of rule 3745-109-11 of the Administrative Code rule shall be deemed to be an electronic submission by me."; and

- (v) The following certification statement by such CAIR authorized account representative or alternate CAIR authorized account representative: "Until this notice of delegation is superseded by another notice of delegation under paragraph (A)(2)(vii)(d) of rule 3745-109-11 of the Administrative Code, I agree to maintain an e-mail account and to notify the administrator immediately of any change in my e-mail address, unless all delegation of authority by me under paragraph (A)(2)(vii) of rule 3745-109-11 of the Administrative Code is terminated.".
- (d) A notice of delegation submitted under paragraph (A)(2)(vii)(c) of this rule shall be effective, with regard to the CAIR authorized account representative or alternate CAIR authorized account representative identified in such notice, upon receipt of such notice by the administrator and until receipt by the administrator of a superseding notice of delegation submitted by such CAIR authorized account representative or alternate CAIR authorized account representative, as appropriate. The superseding notice of delegation may replace any previously identified agent, add a new agent, or eliminate entirely any delegation of authority.
- (e) Any electronic submission covered by the certification in paragraph (A)(2)(vii)(c)(iv) of this rule and made in accordance with a notice of delegation effective under paragraph (A)(2)(vii)(d) of this rule shall be deemed to be an electronic submission by the CAIR designated representative or alternate CAIR designated representative submitting such notice of delegation.

- (3) Account identification. The administrator shall assign a unique identifying number to each account established under paragraph (A)(1) or (A)(2) of this rule.

(B) Responsibilities of CAIR authorized account representative.

Following the establishment of a CAIR SO₂ allowance tracking system account, all submissions to the administrator pertaining to the account, including, but not limited to, submissions concerning the deduction or transfer of CAIR SO₂ allowances in the account, shall be made only by the CAIR authorized account representative for the account.

(C) Recordation of CAIR SO₂ allowances.

(1) Recordation for compliance accounts.

- (a) After a compliance account is established under paragraph (A)(1) of this rule or 40 CFR 73.31(a) or (b), the administrator shall record in the compliance account any CAIR SO₂ allowance allocated to any CAIR SO₂ unit at the source for each of the thirty years starting the later of 2010 or the year in which the compliance account is established and any CAIR SO₂ allowance allocated for each of the thirty years starting the later of 2010 or the year in which the compliance account is established and transferred to the source in accordance with rule 3745-109-12 of the Administrative Code or 40 CFR Part 73.
- (b) In 2011 and each year thereafter, after administrator has completed all deductions under paragraph (C)(2) of this rule, the administrator shall record in the compliance account any CAIR SO₂ allowance allocated to any CAIR SO₂ unit at the source, for the new thirtieth year (i.e., the year that is thirty years after the calendar year for which such deductions are or could be made) and any CAIR SO₂ allowance allocated for the new thirtieth year and transferred to the source in accordance with rule 3745-109-12 of the Administrative Code or 40 CFR Part 73, Subpart D.

(2) Recordation for general accounts.

- (a) After a general account is established under paragraph (A)(2) of this rule or 40 CFR 73.31(c), the administrator shall record in the general account any CAIR SO₂ allowance allocated for each of the thirty years starting the later of 2010 or the year in which the general account is

established and transferred to the general account in accordance with rule 3745-109-12 of the Administrative Code or 40 CFR Part 73, Subpart D.

(b) In 2011 and each year thereafter, after administrator has completed all deductions under paragraph (A)(2) of this rule, the administrator shall record in the general account any CAIR SO₂ allowance allocated for the new thirtieth year (i.e., the year that is thirty years after the calendar year for which such deductions are or could be made) and transferred to the general account in accordance with rule 3745-109-12 of the Administrative Code or 40 CFR Part 73, Subpart D.

(3) Serial numbers for allocated CAIR SO₂ allowances. When recording the allocation of CAIR SO₂ allowances issued by a director under paragraph (I) of rule 3745-109-14 of the Administrative Code, the administrator shall assign each such CAIR SO₂ allowance a unique identification number that shall include digits identifying the year of the control period for which the CAIR SO₂ allowance is allocated.

(D) Compliance with CAIR SO₂ emissions limitation.

(1) Allowance transfer deadline. The CAIR SO₂ allowances are available to be deducted for compliance with a source's CAIR SO₂ emissions limitation for a control period in a given calendar year only if the CAIR SO₂ allowances:

(a) Were allocated for the control period in the year or a prior year; and

(b) Are held in the compliance account as of the allowance transfer deadline for the control period or are transferred into the compliance account by a CAIR SO₂ allowance transfer correctly submitted for recordation under paragraphs (A) and (B) of rule 3745-109-12 of the Administrative Code by the allowance transfer deadline for the control period.

(2) Deductions for compliance. Following the recordation, in accordance with paragraph (B) of rule 3745-109-12 of the Administrative Code, of CAIR SO₂ allowance transfers submitted for recordation in a source's compliance account by the allowance transfer deadline for a control period, the administrator shall deduct from the compliance account CAIR SO₂ allowances available under paragraph (D)(1) of this rule in order to determine whether the source meets the CAIR SO₂ emissions limitation for the control period as follows:

- (a) For a CAIR SO₂ source subject to an acid rain emissions limitation, the administrator will, in the following order:
- (i) Deduct the amount of CAIR SO₂ allowances, available under paragraph (D)(1) of this rule and not issued by the director under paragraph (I) of rule 3745-109-14 of the Administrative Code, that is required under 40 CFR 73.35 (b) ~~or~~ and (c). If there are sufficient CAIR SO₂ allowances to complete this deduction, the deduction shall be treated as satisfying the requirements of 40 CFR 73.35 (b) and (c).
 - (ii) Deduct the amount of CAIR SO₂ allowances, not issued by the director under paragraph (I) of rule 3745-109-14 of the Administrative Code, that is required under 40 CFR 73.35 (d) and 40 CFR 77.5. If there are sufficient CAIR SO₂ allowances to complete this deduction, the deduction shall be treated as satisfying the requirements of 40 CFR 73.35 (d) and 40 CFR 77.5.
 - (iii) Treating the CAIR SO₂ allowances deducted under paragraph (D)(2)(a)(i) of this rule as also being deducted under this paragraph (D)(2)(a)(iii) of this rule, deduct CAIR SO₂ allowances available under paragraph (D)(1) of this rule (including any issued by the director under paragraph (I) of rule 3745-109-14 of the Administrative Code) in order to determine whether the source meets the CAIR SO₂ emissions limitation for the control period, as follows:
 - (a) Until the tonnage equivalent of the CAIR SO₂ allowances deducted equals, or exceeds in accordance with paragraphs (D)(3)(a) and (D)(3)(b) of this rule, the number of tons of total SO₂ emissions, determined in accordance with rule 3745-109-13 of the Administrative Code, from all CAIR SO₂ units at the source for the control period; or
 - (b) If there are insufficient CAIR SO₂ allowances to complete the deductions in paragraph (D)(2)(a)(iii)(a) of this rule, until no more CAIR SO₂ allowances available under paragraph (D)(1) of this rule (including any issued by the director under paragraph (I) of rule 3745-109-14 of the Administrative Code) remain in the compliance account.

(b) For a CAIR SO₂ source not subject to an acid rain emissions limitation, the administrator shall deduct CAIR SO₂ allowances available under paragraph (D)(1) of this rule (including any issued by the director under paragraph (I) of rule 3745-109-14 of the Administrative Code) in order to determine whether the source meets the CAIR SO₂ emissions limitation for the control period, as follows:

(i) Until the tonnage equivalent of the CAIR SO₂ allowances deducted equals, or exceeds in accordance with paragraphs (D)(3)(a) and (D)(3)(b) of this rule, the number of tons of total SO₂ emissions, determined in accordance with rule 3745-109-13 of the Administrative Code, from all CAIR SO₂ units at the source for the control period; or

(ii) If there are insufficient CAIR SO₂ allowances to complete the deductions in paragraph (D)(2)(b)(i) of this rule, until no more CAIR SO₂ allowances available under paragraph (D)(1) of this rule (including those issued by the director under paragraph (I) of rule 3745-109-14 of the Administrative Code) remain in the compliance account.

(3) Identification of CAIR SO₂ allowances by serial number.

(a) Identification of CAIR SO₂ allowances by serial number. The CAIR authorized account representative for a source's compliance account may request that specific CAIR SO₂ allowances, identified by serial number, in the compliance account be deducted for emissions or excess emissions for a control period in accordance with paragraph (D)(2) or (D)(4) of this rule. Such request shall be submitted to the administrator by the allowance transfer deadline for the control period and include, in a format prescribed by the administrator, the identification of the CAIR SO₂ source and the appropriate serial numbers.

(b) First-in, first-out. The administrator shall deduct CAIR SO₂ allowances under paragraph (D)(2) or (D)(4) of this rule from the source's compliance account, in the absence of an identification or in the case of a partial identification of CAIR SO₂ allowances by serial number under paragraph (D)(3)(a) of rule 3745-109-11 of the Administrative Code, on a first-in, first-out (FIFO) accounting basis in the following order:

(i) Any CAIR SO₂ allowances that were allocated to the units at the source for a control period before 2010, in the order of

recordation;

- (ii) Any CAIR SO₂ allowances that were allocated to any entity for a control period before 2010 and transferred and recorded in the compliance account pursuant to rule 3745-109-12 of the Administrative Code or 40 CFR Part 73, Subpart D, in the order of recordation;
- (iii) Any CAIR SO₂ allowances that were allocated to the units at the source for a control period during 2010 through 2014, in the order of recordation;
- (iv) Any CAIR SO₂ allowances that were allocated to any entity for a control period during 2010 through 2014 and transferred and recorded in the compliance account pursuant to rule 3745-109-12 of the Administrative Code or 40 CFR Part 73, Subpart D, in the order of recordation;
- (v) Any CAIR SO₂ allowances that were allocated to the units at the source for a control period in 2015 or later, in the order of recordation; and
- (vi) Any CAIR SO₂ allowances that were allocated to any entity for a control period in 2015 or later and transferred and recorded in the compliance account pursuant to rule 3745-109-12 of the Administrative Code or 40 CFR Part 73, Subpart D, in the order of recordation.

(4) Deductions for excess emissions.

- (a) After making the deductions for compliance under paragraph (D)(2) of rule 3745-109-11 of the Administrative Code for a control period in a calendar year in which the CAIR SO₂ source has excess emissions, the administrator shall deduct from the source's compliance account the tonnage equivalent in CAIR SO₂ allowances, allocated for the control period in the immediately following calendar year (including any issued by the director under paragraph (I) of rule 3745-109-14 of the Administrative Code), equal to, or exceeding in accordance with paragraphs (D)(3)(a) and (D)(3)(b) of this rule, three times the following amount: the number of tons of the source's excess emissions minus, if the source is subject to an acid rain emissions limitation, the amount of the CAIR SO₂ allowances required to be deducted under paragraph (D)(2)(a)(ii) of this rule.

(b) Any allowance deduction required under paragraph (D)(4)(a) of this rule shall not affect the liability of the owners and operators of the CAIR SO₂ source or the CAIR SO₂ units at the source for any fine, penalty, or assessment, or their obligation to comply with any other remedy, for the same violations, as ordered under the Clean Air Act or applicable state law.

(5) Recordation of deductions. The administrator shall record in the appropriate compliance account all deductions from such an account under ~~paragraph~~ paragraphs (D)(2) and (D)(4) of this rule and rule 3745-109-14 of the Administrative Code.

(6) Administrator's action on submissions.

(a) The administrator may review and conduct independent audits concerning any submission under the CAIR SO₂ trading program and make appropriate adjustments of the information in the submissions.

(b) The administrator may deduct CAIR SO₂ allowances from or transfer CAIR SO₂ allowances to a source's compliance account based on the information in the submissions, as adjusted under paragraph (D)(5)(a) of this rule, and record such deductions and transfers.

(E) Banking.

(1) CAIR SO₂ allowances may be banked for future use or transfer in a compliance account or a general account in accordance with paragraph (E)(2) of rule 3745-109-12 of the Administrative Code.

(2) Any CAIR SO₂ allowance that is held in a compliance account or a general account shall remain in such account unless and until the CAIR SO₂ allowance is deducted or transferred under ~~paragraphs~~ paragraph (D) or (F) of this rule, or rules 3745-109-12 or 3745-109-14 of the Administrative Code.

(F) Account error.

The administrator may, at his or her sole discretion and on his or her own motion, correct any error in any CAIR SO₂ allowance tracking system account. Within ten business days of making such correction, the administrator shall notify the CAIR authorized account representative for the account.

(G) Closing of general accounts.

- (1) The CAIR authorized account representative of a general account may submit to the administrator a request to close the account, which shall include a correctly submitted allowance transfer under paragraphs (A) and (B) of rule 3745-109-12 of the Administrative Code for any CAIR SO₂ allowances in the account to one or more other CAIR SO₂ allowance tracking system accounts.
- (2) If a general account has no allowance transfers in or out of the account for a twelve-month period or longer and does not contain any CAIR SO₂ allowances, the administrator may notify the CAIR authorized account representative for the account that the account shall be closed following twenty business days after the notice is sent. The account shall be closed after the twenty-day period unless, before the end of the twenty-day period, the administrator receives a correctly submitted transfer of CAIR SO₂ allowances into the account under paragraphs (A) and (B) of rule 3745-109-12 of the Administrative Code or a statement submitted by the CAIR authorized account representative demonstrating to the satisfaction of the administrator good cause as to why the account should not be closed.

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